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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,311	08/18/2003	Jay W. Larson	BSCO-20-US#3	4216

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HAROLD I. MASTELLER, JR.  
P.O. BOX 302  
3325 GREENWOOD DRIVE  
SPRINGTOWN, PA 18081

EXAMINER
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AMIRI, NAHID

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/643,311

Applicant(s)

LARSON, JAY W.

Examiner

Nahid Amiri

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 26-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 18 August 2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the distance (D3) is greater than the length of vertical leg must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 47 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not clear if the top and bottom trust chord are the same chords as improved top and bottom chord.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686

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F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 26-57 are rejected under the judicially created doctrine of double patenting over claims 1-25 of U. S. Patent No. 5,865,008 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows:

Claim 26 has all the limitations of the claim 1 of US Patent No. '008, it is obvious the longitudinal surface extending along the leg is the same as a clamping surface of applicant's claimed invention.

Claim 27 has same limitation of claim 4 of US Patent No. '008, it is obvious the terminal end is the same as the stiffener member.

Claim 28 has same limitation of claim 5 of US Patent No. '008, it is obvious the terminal end is the same as the stiffener member.

Claim 29 has the same limitations of claim 6 of US Patent No. '008, it is obvious the terminal end is the same as the stiffener member.

Claim 30 has the limitations of claim 1 of US Patent No. '008 wherein it is obvious the longitudinal surface extending along the leg is the same as the clamping surface of applicant's claimed invention.

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Claim 31 has the same limitations of claim 7 of US Patent No. '008, it is obvious the clamping surface is the same as the longitudinal surface.

Claim 32 has the same limitation of claim 1 of US Patent No. '008.

Claim 33 has the limitation of claim 18 of US Patent No. '008 and it is obvious since the structural section is chord member therefore top and bottom chord comprising the structural member.

Claim 34 has the same limitation of claim 17 of US Patent No. '008.

Claim 35 has the limitation of claim 19 of US Patent No. '008.

Claim 36 has the limitation of claim 17 of US Patent No. '008 and it is obvious since the structural section is chord member therefore top and bottom chord comprising the structural member.

In regard to claim 37 has the limitation of claim 18 of US Patent No. '008.

In regard to claim 38 has the limitation of claim 17 of US Patent No. '008.

Claims 39-40 have the same limitations of claim 11 of US Patent No. '008.

Claims 41-42 has the same limitations of claim 13 of US Patent No. '008.

Claims 43-44 has the same limitations of claim 14 of US Patent No. '008.

Claims 45-46 has the limitation which is matter of design choice to used the header over a window opening.

Claim 47 has the same limitations of claim 18 of US Patent No. '008, it is obvious the clamping surface is the same as the longitudinal surface.

Claim 48 has the Claims 45-46 has the limitation which is matter of design choice in order to used the web truss member with higher thickness.

Claim 49 has same limitation of claim 22 of US Patent No. '008, it is obvious the terminal end is the same as the oblique angled stiffener member.

Claim 50 has same limitation of claim 23 of US Patent No. '008, it is obvious terminal end is the same as the oblique angled stiffener member.

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Claim 51 has the same limitations of claim 24 of US Patent No. '008, it is obvious the terminal end is the same as the stiffener member.

Claim 52 has the same limitations of claim 19 of US Patent No. '008, it is obvious the clamping surface is the same as the longitudinal surface.

Claim 53 has the same limitation of claim 2 of US Patent No. '008.

Claim 54 has same limitation of claim 4 of US Patent No. '008, it is obvious the terminal end is the same as the stiffener member.

Claim 55 has same limitation of claim 5 of US Patent No. '008, it is obvious the terminal end is the same as the stiffener member.

Claim 56 has same limitation of claim 6 of US Patent No. '008, it is obvious the terminal end is the same as the stiffener member.

Claim 57 has same limitation of claim 8 of US Patent No. '008, it is obvious the clamping surface is the same as the longitudinal surface.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent No. 1,311,486	Benedict
US Patent No. 2,284,898	Hartman
US Patent No. 2,541,784	Shannon
US Patent No. 2,642,825	McElbhone et al.

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US Patent No. 3,656,270	Phillips
US Patent No. 3,785,108	Satchell
US Patent No. 4,389,829	Murphy
US Patent No. 4,435,940	Davenport et al.
US Patent No. 4,551,957	Madray
US Patent No. 4,616,453	Shepard, Jr. et al.
US Patent No. 4,621,475	McClain
US Patent No. 4,644,728	Stauss et al.
US Patent No. 4,748,784	Dividoff et al.
US Patent No. 4,798,037	Collins
US Patent No. 4,809,476	Satchell
US Patent No. 4,873,323	Nelson
US Patent No. 4,982,545	Stromback
US Patent No. 4,986,051	Meyer et al.
US Patent No. 5,157,883	Meyer
US Patent No. 5,325,651	Meyer et al.
US Patent No. 5,417,028	Meyer
US Patent No. 5,457,927	Pellock et al.
US Patent No. 5,463,837	Dry
US Patent No. 5,499,480	Bass
US Patent No. 5,527,625	Bodnar
US Patent No. 5,535,569	Seccombe et al.
US Patent No. 5,542,227	Frayne
US Patent No. 5,577,353	Simpson

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nahid Amiri whose telephone number is (703) 305-4241 and Fax number is 703-872-9306. The examiner can normally be reached on Monday-Friday from 8:00-5:30 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Carl Friedman can be reached at (703) 308-0839.

na 

April 13, 2004



Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600